Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present:HONORABLE PATRICIA P. SATTERFIELD IAS TERM, PART 19

Justice

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ROMAN LOIEK,

Plaintiff,

Index No: 10941/03
Motion Date: 2/8/06
Motion Cal. Nos: 23

-against-

1133 FIFTH AVENUE CORP., KEAN DEVELOPMENT CO., INC., "JANE" GLEACHER, ERIC GLEACHER, RYGROVE, INC., and NE & WS, INC., CORP.,

Defendants.

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The following papers numbered 1 to 31 read on this motion by plaintiff for an order granting him summary judgment on the issue of liability under Labor Law § 240(1). Defendants Rygrove, NE &WS Inc., Corp., 1133 Fifth Avenue Corp., Kean Development Co., Inc., "Jane" Gleacher and Eric Gleacher cross-move for summary judgment dismissing plaintiff's complaint and all cross claims; defendant NE &WS Inc., Corp., further cross-moves for severance; and defendants 1133 Fifth Avenue Corp., Kean Development Co., Inc., "Jane" Gleacher and Eric Gleacher further cross- move for summary judgment against defendant NE &WS Inc., Corp. for contractual indemnification.

	PAPERS NUMBERED
Notice of Motion-Affidavits-Exhibits.....	1 - 6
Notice of Cross-Motions-Affidavits-Exhibits.....	7 - 21
Answering Affidavits-Exhibits.....	22 - 26
Reply.....	27 - 37

Upon the foregoing papers, it is ordered that the motion and cross-motions are consolidated for the purpose of disposition and are determined as follows:

Introduction

This is an action for personal injuries allegedly sustained by plaintiff during the course of his employment with non-party Zale Construction, a carpentry subcontractor, during the renovation project of the premises owned by defendants "Jane" and Eric Gleacher (the " Gleachers"), and managed by 1133 Fifth Avenue Corp. ("1133"). The instant action was commenced by filing on May 2, 2003 against the Gleachers, 1133 and Kean Development Co. Inc. ("Kean"), which impleaded NE &WS Inc., Corp. ("NEWS") by service of third-party summons and complai May 2, 2005. Thereafter, on June 28, 2005, plaintiff served supplemental pleadings adding NEWS as a direct defendant.

Relevant Facts

Plaintiff allegedly was injured when, while attempting to install a panel over an air conditioning duct in the ninth floor ceiling of the premises, he walked to his tool box and fell through the opening for the staircase to the eight floor landing, after slipping on a piece of plastic which covered the opening. Kean, was the general contractor on the renovation project of the premises, which involved, inter alia, the installation of an elliptical staircase between two apartments located on the eighth and ninth floors of the building for their conversion into a duplex apartment. NEWS, a carpentry contractor, installed the staircase connecting the apartments,[1] and defendant Rygrove, Inc. ("Rygrove"), performed framing and drywall installation at the premises.

The record reveals that NEWS was hired pursuant to a subcontracting agreement to install an elliptical staircase at the site of the opening. Kean provided a protective fencing to enclose the opening, as well as the planking and plywood that would cover the opening when the fence had to be removed for NEWS, Rygrove or other contractors to perform work in the area. Pursuant to the subcontracting agreement between Kean and NEWS, Kean alleges that in addition to installing the staircase, NEWS was to install a protective banister around the opening.[2]

Based upon the foregoing, plaintiff moves for an order granting him summary judgment on the issue of liability under Labor Law § 240(1). The collective defendants, with the exception of Kean, cross-move for summary judgment and dismissal of the complaint and all cross claims on the ground that plaintiff's accident does not come within the purview of sections 200, 240(1) or 241(6) of the Labor Law,[3] and thus there are no triable issues of fact with respect to any of the claims asserted. NEWS also seeks severance of the claims asserted against it by plaintiff, 1133, Kean and the Gleachers, and 1133, Kean, and the Gleachers further cross-moves for summary judgment against NEWS for contractual indemnification.

Discussion

It is well settled that although an order of severance, under CPLR 603, is a matter of judicial discretion, such discretion should be exercised sparingly. See, Shanley v. Callanan Industries, Inc., 54 N.Y.2d 52 (1981); see, Ingoglia v. Leshaj, 1 A.D.3d 482 (2nd Dept. 2003). Where the factual and legal issues raised in the subject actions are closely related, "[] in the interest of judicial economy, a single trial would be more appropriate." Fries v. Sid Tool Co., Inc. , 90 A.D.2d 512 (1982); see, DeCongilio v. Greenman, 125 A.D.2d 535 (2nd Dept. 1986). Further, severance under CPLR 1010 is appropriate where there has been an inordinate and unjustified delay in impleading which prejudices the substantial rights of any party. See, Singh v. City of New York, 294 A.D.2d 422, 423 (2nd Dept. 2002); Ambriano v. Bowman, 245 A.D.2d 404 (2nd Dept. 1997). Nevertheless, although there may have been a delay in commencing a third-party action, where, as here, "[] the actions involve common factual and legal issues, a single trial is appropriate in the interest of judicial economy and to avoid the possibility of inconsistent jury verdicts (citations omitted)." Villatoro v. Talt, 269 A.D.2d 390, 391 (2nd Dept.

2000). Accordingly, the motion for severance is denied.

With respect to the motion and cross-motions, it is well established that a motion for summary judgment should be granted when there is no doubt as to the absence of triable issues. See, Rotuba Extruders, Inc. v. Ceppos, 46 N.Y.2d 223, 231(1978); Andre v. Pomeroy, 35 N.Y.2d 361, 364 (1974); Taft v. New York City Tr. Auth., 193 A.D.2d 503, 505 (1st Dept. 1993). As such, the function of the court on the instant motion is issue finding and not issue determination. See, D.B.D. Nominee, Inc., v. 814 10th Ave. Corp., 109 A.D.2d 668, 669 (2nd Dept. 1985). The proponent of such a motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. See, Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of the counter position. See, Zuckerman v. City of New York, supra.

I. Labor Law § 200

"Labor Law § 200 is a codification of the common-law duty imposed upon an owner or general contractor to provide a safe workplace [see, Comes v. New York State Elec. & Gas Corp., 82 N.Y.2d 876, 609 N.Y.S.2d 168, 631 N.E.2d 110 (1993)]. To be held liable under Labor Law
§ 200, the owner or general contractor must have the authority to control the activity which brings about the injury... (citations omitted)." Mas v. Kohen, 283 A.D.2d 616 (2nd Dept. 2001); see, Quintavalle v. Mitchell Backhoe Service, Inc., 306 A.D.2d 454 (2nd Dept. 2003). Further, liability attaches where the owner or contractor created the hazard, or had actual or constructive notice of the unsafe condition, and exercised sufficient control over the work being performed to correct or avoid the unsafe condition. See, Leon v J & M Peppe Realty Corp.,190 A.D.2d 400 (1st Dept. 1993). Where the dangerous condition is the result of the contractor's methods and the owner exercises no supervisory control over the construction, liability will not attach to the owner. See, Young Ju Kim v. Herbert Const. Co., Inc., 275 A.D.2d 709 (2nd Dept. 2000); Comes v. New York State Elec. & Gas Corp., 82 N.Y.2d 876, 877 (1993).

In the case at bar, the evidence adduced clearly establishes that Rygrove, the sub-contractor that performed framing and drywall installation at the premises, the Gleachers, owners of the premises, and 1133, the managing agent, are not liable under Labor Law § 200. "It is well settled that an implicit precondition to this duty is that the party to be charged with that obligation 'have the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition' (citations omitted)." Rizzuto v. L.A. Wenger Contracting Co., Inc., 91 N.Y.2d 343, 352 (1998). Despite allegations to the contrary, clearly it cannot be said that Rygrove, who had not commenced its work at the time that the opening was made, and had not worked in the area of the opening several weeks prior to the accident, was responsible for securing the opening. Further, there cannot be an imputation of notice, as the plaintiff suggests. Likewise, the Gleachers and 1133 did not have the opportunity to direct or supervise the work, or take measures to ensure plaintiff's safety. Consequently, they are entitled to summary judgment.

NEWS is also entitled to summary judgment and dismissal of this Labor Law claim. Although Kean contends that NEWS failed to provide protective barriers to prevent the accident in question, there is no admissible evidence in the record which would indicate that NEWS was charged with the responsibility of providing protective barriers, created or had notice of the hazard, or had the authority to control the work methods employed by plaintiff. See, Rosas v. Ishack, 219 A.D.2d 633 (2 Dept. 1995). Although NEWS installed the staircase, it did not make the opening in the first instance, and was not on site at the time of the happening of the accident.

II. Labor Law § 240(1)

A cause of action under section 240(1) of the Labor Law, imposes a nondelegable duty upon owners and general contractors which applies when an injury is the result of one of the elevation-related risks contemplated by that section [see, Rose v. A. Servidone, Inc., 268 A.D.2d 516 (2nd Dept. 2000)], which prescribes safety precautions to protect laborers from unique gravity-related hazards such as falling from an elevated height or being struck by a falling object when the work site is positioned below the level where materials or loads are being hoisted or secured. See, Narducci v. Manhasset Bay Assocs., 96 N.Y.2d 259 (2001); Misseritti v. Mark IV Constr. Co., Inc., 86 N.Y.2d 487 (1995); Ross v. Curtis-Palmer Hydro-Elec. Co., 81 N.Y.2d 494 (1993); Rocovich v. Consolidated Edison Co., 78 N.Y.2d 509 (1991). Thus, "[t]he extraordinary protections of Labor Law § 240(1) extend only to a narrow class of special hazards, and do 'not encompass *any and all* perils that may be connected in some tangential way with the effects of gravity." Nieves v. Five Boro Air Conditioning & Refrig. Corp., 93 N.Y.2d 914, 915-916 (1999)[italics in the original]. "[R]outine maintenance activities in a non-construction, non-renovation context are not protected by Labor Law § 240 [see, Brown v. Christopher St. Owners Corp., 87 N.Y.2d 938, 939 (1996), 641 N.Y.S.2d 221, 663 N.E.2d 1251; Vanerstrom v. Strasser, 240 A.D.2d 563, 659 N.Y.S.2d 77(2nd Dept. 1997)]." Paciente v. MBG Development, Inc., 276 A.D.2d 761 (2nd Dept. 2000); see, Jani v. City of New York, 284 A.D.2d 304 (2nd Dept. 2001).

Here, plaintiff contends that he is entitled to summary judgment under Labor Law § 240(1), because he fell from an elevated position, and was not given the benefit of any safety devices at the time of the accident. In opposition and in support of their cross-motion, 1133 and the Gleachers contend that they are entitled to summary judgment and dismissal of the claims asserted under Labor Law § 240(1), as they are the owners of a one family dwelling who never possessed the right to direct, control or supervise work bringing about the injury.

"Labor Law § 240 and § 241 imposes a nondelegable duty upon contractors and owners to provide scaffolding and other adequate and reasonable protection to persons employed in construction, excavation, or demolition. However, the owners of one- and two-family dwellings, who do not direct or control the work, are statutorily exempt from liability (citations omitted)." Putnam v. Karaco Industries Corp., 253 A.D.2d 457 (2 Dept. 1998); see, Chang v. Chunbukyo Church, 17 A.D.3d 390, (2 Dept. 2005.)[4] Here, it is clear that the Gleachers are not subject to the strict liability imposed by this statutory provision, a fact conceded by plaintiff, and therefore are entitled to summary judgment and dismissal of this claim asserted against them under Labor

Law § 240.

With respect to 1133, plaintiff contends that it is not entitled to the benefit of the homeowner exception as 1133 is a cooperative corporation engaged in the commercial enterprise of leasing property. "[T]he existence of both residential and commercial uses on a property does not automatically disqualify a dwelling owner from invoking the exemption. Instead, whether the exemption is available to an owner in a particular case turns on the site and purpose of the work. Such a test comports with the underlying notions of reasonableness and fairness that motivated the Legislature's adoption of the dwelling-owner exemption." Cannon v. Putnam,76 N.Y.2d 644, 650 (1990). The Court of Appeals, in Bartoo v. Buell, 87 N.Y.2d 362 (1996), stated the following [87 N.Y.2d at 368]:

> Mindful of this history and remedial purpose, we have avoided an overly rigid interpretation of the homeowner exemption and have employed a flexible "site and purpose" test to determine whether the exemption applies. For example, in Cannon, we concluded that the homeowner was exempt from liability, even though some commercial activity occurred on the property, where the work had been "undertaken solely in connection with defendant's residential use of the property" [76 N.Y.2d, at 650, 563 N.Y.S.2d 16, 564 N.E.2d 626 (1990), supra; see also, Khela v. Neiger, 85 N.Y.2d 333, 624 N.Y.S.2d 566, 648 N.E.2d 1329(1995)].
>
> In keeping with our pragmatic interpretation of the homeowner exemption, we have declined to apply the exemption where a building, though structurally a one-family dwelling, was used by its owner exclusively for commercial purposes [see, Van Amerogen v. Donnini, 78 N.Y.2d 880, 573 N.Y.S.2d 443, 577 N.E.2d 1035 (1991)]. The exemption, we held, is not designed to protect homeowners "who use their one or two-family premises entirely and solely for commercial purposes and who hardly are lacking in sophistication or business acumen such that they would fail to recognize the necessity to insure against the strict liability imposed by the statute" [id., at 882, 573 N.Y.S.2d 443, 577 N.E.2d 1035 (1991); see also, Lombardi v. Stout, 80 N.Y.2d 290, 590 N.Y.S.2d 55, 604 N.E.2d 117(1992)].

"In those circumstances, the houses are more accurately considered as commercial enterprises than as one- or two-family houses (citation omitted). As the party claiming the benefit of the exception, the defendant has the burden to show that it applies here (citations omitted)." Lombardi v. Stout, 80 N.Y.2d 290, 297 (1992). Defendant 1133 has failed to meet that burden. As there is a question of fact as to whether defendant 1133 5th Avenue, a corporate entity presumably possessed of "sophistication or business acumen," can be held strictly liable for renovations performed in a residential setting on property engaged in "commercial enterprises," summary judgment is unavailable.

Rygrove and NEWS also cross-move for summary judgment and dismissal of the claims asserted under Labor Law § 240(1), on the basis that they are inapplicable to the instant matter. With respect to Labor Law §§ 240(1), only owners and general contractors can be held absolutely liable for statutory violations. See, Rocovich v Consolidated Edison Co., 78 N.Y.2d 509 (1991); Bland v Manocherian, 66 N.Y.2d 452 (1985); Zimmer v Chemung County Perf. Arts, Inc., 65 N.Y.2d 513 (1985). The duty imposed by section 240 of the Labor Law is nondelegable, and the liability of an owner under this section is not dependent on whether the owner exercised control or supervision over the work. See, Ross v Curtis-Palmer Hydro-Elec. Co., 81 N.Y.2d 494 (1993); Rocovich v Consolidated Edison Co., supra. All other parties are liable "only if they are acting as the 'agents' of the owner or general contractor by virtue of the fact that they had been given the authority to supervise and control the work being performed at the time of the injury (citations omitted)." Serpe v. Eyris Prods., Inc., 243 A.D.2d 375, 379-380 (2nd Dept. 1997).

In the case at bar, the record is devoid of evidence that would remotely suggest that either sub-contractor was acting in the capacity of agents of the owner or general contractor, and they were given the authority to supervise and control the work being performed at the time of the injury. Consequently, there is no basis for the claims asserted against either NEWS or Rygrove under this section of the Labor Law.

III. Labor Law § 241(6)

Labor Law § 241(6) imposes a nondelegable duty of reasonable care upon owners and contractors "to provide reasonable and adequate protection and safety to all persons employed in areas in which construction, excavation, or demolition work is being performed." See, Rizzuto v. Wenger Contr. Co., 91 N.Y.2d 343, 347 (1998); Ross v. Curtis-Palmer Hydro-Elec. Co., 81 N.Y.2d 494, 501-502 (1993). It is well settled that to support a § 241(6) claim, a plaintiff must allege a violation of the New York State Industrial Code, the implementing regulations promulgated by the State Commissioner of Labor, which sets forth a "specific" standard of conduct, and that such violation was the proximate cause of his injuries. See, Vernieri v. Empire Realty Co., 219 A.D.2d 593, 597 (2nd Dept.1995); Ross v. Curtis-Palmer Hydro-Elec. Co., supra at 501-502 (1993). Moreover, like Labor Law § 240(1), only owners and general contractors can be held absolutely liable for statutory violations of Labor Law § 241(6). See, Rocovich v Consolidated Edison Co., 78 N.Y.2d 509 (1991); Bland v Manocherian, 66 N.Y.2d 452 (1985); Zimmer v Chemung County Perf. Arts, Inc., 65 N.Y.2d 513 (1985), and all other parties are liable "only if they are acting as the 'agents' of the owner or general contractor. See, Serpe v Eyris Prods., Inc., 243 A.D.2d 375, 379-380 (2nd Dept. 1997).

In the case at bar, plaintiff cannot establish the liability of NEWS or Rygrove under section 241(6), in light of plaintiff's failure to allege a violation sufficient to support a triable claim for damages under that section against them. See, Ross v. Curtis-Palmer Hydro-Elec. Co., 81 N.Y.2d 494, 501-502 (1993). Additionally, akin to the deficiencies that precluded the imposition of liability upon NEWS and Rygrove under 240(1), there is no evidence which would support a finding that the aforementioned were acting in the capacity of agents of the owner or

general contractor, or were given the authority to supervise and control the work being performed at the time of the injury. Consequently, there is no basis for the claims asserted against either NEWS or Rygrove under section 241(6) of the Labor Law. Likewise, as the Gleachers are exempt from liability based upon the Homeowners Exception, they are entitled to dismissal of this claim as well. See, Putnam v. Karaco Industries Corp., 253 A.D.2d 457 (2 Dept. 1998). For the same reason as stated under section 240(1), summary judgment with respect to 1133 is denied.

IV. Contractual Indemnification

Kean, Gleacher and 1133 also seek contractual indemnification against NEWS pursuant to the subcontracting agreement for the installation of the staircase. The indemnification clause in the contract provides the following:

> To the fullest extent permitted by law, [NEWS] shall indemnify and hold harmless the owners, architect and Kean and all their agents and employees from and against all claims, damages, losses and expenses, including, but not limited to attorneys' fees, arising out of or resulting from the performance of [NEWS'] work under the Subcontract.

They therefore assert that as a result of NEWS' failing to provide a protective railing around the opening, NEWS is contractually obligated to indemnify them. As all the claims against the Gleachers have now been dismissed, this Court will address contractual indemnification only as it relates to 1133 and Kean.

"'While owners and general contractors owe nondelegable duties under the Labor Law to plaintiffs who are employed at their worksites, these defendants can recover in indemnity, either contractual or common-law, from those considered responsible for the accident'[Kennelty v. Darlind Constr., 260 A.D.2d 443, 445-446, 688 N.Y.S.2d 584 (2nd Dept. 1999); see, Brown v. Two Exch. Plaza Partners, 76 N.Y.2d 172, 556 N.Y.S.2d 991, 556 N.E.2d 430 (1990)." Lazzaro v. MJM Industries, Inc., 288 A.D.2d 440, 441 (2 Dept. 2001). "A party is entitled to full contractual indemnification provided that the 'intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances'" [Drzewinski v. Atlantic Scaffold & Ladder Co., 70 N.Y.2d 774, 777, 521 N.Y.S.2d 216, 515 N.E.2d 902 (1987)." Kennelty v. Darlind Const., Inc., 260 A.D.2d 443, 446 (2 Dept.1999). "' Even where a contractual agreement provides for indemnification of a general contractor by a subcontractor, such a provision will not be enforced so as to indemnify a party for its own negligence' (citations omitted)." Chacon v. Calimia Const. Co., 306 A.D.2d 306, 307 (2 Dept. 2003); see, also, General Obligations Law § 5-322.

Here, Kean and 1133 seek contractual indemnification against NEWS, whom this Court has found free of liability on the claims asserted herein. Consequently, as the hold harmless clause seeks to impose liability upon a party that this Court has found not to be the responsible for plaintiff's injury, and to absolve Kean, the party that, by all indications, appears to have been

responsible for failing to adhere to safety mandates of the herein sections, Kean may not benefit from this clause. See, General Obligations Law § 5-322. Likewise, although there is an issue of fact as to whether 1133 falls under the homeowner exception, there are no issues of fact with respect to the liability of NEWS. As a result, 1133 derives no benefit from this indemnification clause.

Conclusion

Accordingly, plaintiff's motion for summary judgment under section 240(1) is granted to the extent that the motion is granted as to defendant Kean Development Co., Inc., and is otherwise denied. The cross-motions by defendant Rygrove, Inc., and the Gleacher defendants, for summary judgment and dismissal of the complaint and all cross claims on the ground that plaintiff's accident does not come within the purview of sections 200, 240(1) or 241(6) of the Labor Law, are granted in their entirety, and the complaint and all cross-claims are dismissed as to those defendants. That branch of the cross-motion by defendant NE &WS Inc., Corp., for severance is now denied as moot. That branch of the cross-motion for summary judgment and dismissal of the complaint and all cross claims on the ground that plaintiff's accident does not come within the purview of sections 200, 240(1) or 241(6) of the Labor Law, is granted in its entirety, and the complaint, the third-party complaint, and all cross-claims hereby are dismissed as to this defendant. The cross-motion by defendant 1133 Fifth Avenue Corp., for contractual indemnification against defendant NE &WS Inc., Corp., and summary judgment and dismissal of the complaint and all cross claims on the ground that plaintiff's accident does not come within the purview of sections 200, 240(1) or 241(6) of the Labor Law, is granted to the extent that the common law and Labor Law § 200 claim is dismissed, and is otherwise denied. Lastly, the cross-motion by defendant Kean Development Co., Inc. for summary judgment against NE &WS Inc., Corp. for contractual indemnification is denied. All other arguments asserted herein were considered and found without merit by this Court.

As a result of the foregoing, the stay imposed by this Court's order on March 8, 2006, hereby is lifted, and the remaining parties are directed to appear in the Trial Scheduling Past on June 26, 2006, at 9:30 a.m.

Dated: May 17, 2006

.....
J.S.C.

[1] Although NEWS installed the staircase, non-party Metro, a demolition subcontractor, made the opening, and the fabricated steel was installed by non-party Iron King.

[2] By notice of cross-motion, 1133, Kean and the Gleachers annex as Exhibit "A," the subcontract agreement in question, which contains a handwritten note under the area in which the work was to be described, stating "see attached NEWS proposal dated 1/18/02, Option B-page 2 of 4, description of work 1of 4. Commencement of worked depends on [] stair and rail design approval." However, the proposal that was referenced was not included in the cross-motion, but submitted in a reply affirmation in response to the opposition filed by NEWS. Additionally, the reply affirmation contains an affidavit by the president of Kean, making

reference to NEWS' alleged obligation to install protective handrails.

At a conference before this Court on the date of submission of the motion, NEWS took issue with these additional documents and requested that the reply not be considered. This Court took all of the papers in under that advisement and indicated that a determination would be made at the time that a written decision was issued as to whether the reply contained inappropriate new information. Consequently, it is the determination of this Court that the proposal, first submitted for consideration in the subject reply papers, raises new matters not previously contained in the cross-motion of 1133, Kean and the Gleachers. However, as the affirmation and affidavit, contain allegations that were previously asserted in the cross-motion, those documents do not contain inappropriate information. Consequently, the Court will not consider the objectionable portion of the reply.

[3] Labor Law § 200 provides, in pertinent part that: "All places to which this chapter applies shall be so constructed, equipped, arranged, operated, and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein..."

Labor Law § 240 provides, in pertinent part that: "All contractors and owners and their agents..., in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

Labor Law § 241(6) provides, in pertinent part that: "All areas in which construction, excavation or demolition work is being performed shall be constructed, shored, equipped, guarded, arranged, operated, and conducted as to provide reasonable and adequate protection and safety to the persons employed therein..."

[4] The Court of Appeals, in Bartoo v. Buell, 87 N.Y.2d 362, 367 (1996), stated the following with regard to the legislative intent of the Homeowners exception:

> In 1980, the Legislature amended Labor Law §§ 240 and 241 to exempt "owners of one and two-family dwellings who contract for but do not direct or control the work" from the absolute liability imposed by these statutory provisions. The amendments, intended by the Legislature to shield homeowners from the harsh consequences of strict liability under the provisions of the Labor Law, reflect the legislative determination that the typical homeowner is no better situated than the hired worker to furnish appropriate safety devices and to procure suitable insurance protection [see, Cannon v. Putnam, 76 N.Y.2d 644, 649, 563 N.Y.S.2d 16, 564 N.E.2d 626(1990)]. As stated by the Law Revision Commission, "an exemption for one and two family dwelling owners is needed" because "the theory of dominance of the owner over the subcontractor or worker breaks down at this level" (Recommendation of NY Law Rev Commn, reprinted in 1980 McKinney's Session Laws of NY, at 1659).